IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 602 OF 2006.

Radhabai Nivrutti Kantute
since deceased by her heirs
and legal representatives
Tukaram Nivrutti Kantute
and others. ... Appellants.

Versus.

Ramchandra Tayappa Godase
and others. ... Respondents.

Shri S.S.Patwardhan for the Appellants.

Shri Ajay Joshi for the Respondents Nos.2 and 3.

CORAM : ABHAY S.OKA, J.

DATED : 26th July, 2007.

P.C.:

1. The Second Appeal is by the original Defendants Nos.3 to 6 in a suit filed by the 1st to 3rd Respondents. The suit filed by the 1st to 3rd Respondents is for declaration that the order dated 22nd November 2001 passed by the Taluka Inspector of Land Records, Pandharpur is null and void and not binding on them. A prayer is also made for protection of possession by granting a perpetual injunction. The trial Court framed various issues including the issue whether the original Plaintiffs have proved that they are the owners and are in possession of the suit property. The issue of title was decided by the trial Court in favour of the 1st to 3rd Respondents by observing that the said Respondents have a better title than the Appellants and therefore, the said Respondents

have proved their claim of ownership. The trial Court, therefore, passed a decree of declaration and injunction. An Appeal was preferred by the present Appellants to the District Court. By a Judgment and Decree dated 7th February 2006 the said Appeal has been dismissed. However, while deciding the Appeal, the Appellate Court has not framed any specific point for determination as regards the title/ownership of the original Plaintiffs. The Appellate Court specifically confirmed the finding of the trial court that the order passed by the Taluka Inspector of Land Records was a nullity inasmuch as mandatory provisions of law were not followed before passing the said order. The Appellate Court in paragraph 9 of the Judgment observed that considering the nature of the suit the Court need not go into the question of title.

2. The learned Counsel for the Appellants submitted that the suit filed by the 1st to 3rd Respondents was based on title and therefore, even while considering the prayer for perpetual injunction, the Appellate Court ought to have decided the issue of title. He pointed out that a specific prayer was made before the Appellate Court for remanding the suit to the trial Court by granting permission to the Appellants to file written statement. He submitted that the said request ought to have been accepted by the Appellate Court. The learned

Counsel appearing for the 1st to 3rd Respondents (original Plaintiffs) pointed out that the Appellate Court has not at all decided the issue of title and in fact in paragraph 12 of its Judgment, the Appellate court has observed that the parties may get the relief of declaration by approaching appropriate forum.

3. I have considered the submissions. In paragraph 9 of the Judgment the Appellate Court has observed thus:

> "9. .....In such a suit Court need not go into question of title."

In paragraph 10 of the Judgment, the Appellate Court has noted the submission made on behalf of the Appellants that the Appellants are the owners of the suit property on the basis of the gift deed. In paragraph 11 of the judgment, the Appellate Court referred to the extracts of assessment as well as the City Survey record. The Appellate Court found that the said documents are the evidence of possession of the original Plaintiffs. In paragraph 12 of the judgment, the Appellate Court again referred to the submissions made on behalf of the Appellants on the issue of title. The Appellate Court specifically observed in paragraph 12 as under:

> "12. .....However, if this is the suit

> for injunction simplicitor, I need not go into title of the parties. Considering the contentions on record and the submissions made before me in this appeal, it would be proper to direct the parties to approach the Court to get decided the question of title which requires thorough inquiry and consideration of legal aspects. So if this is the suit for injunction simplicitor I am not going to decide the question of title leaving it to the parties to get it declared."

The Appellate Court observed that even if written statement of the Appellants is taken on record in which they are claiming title on the basis of the gift deed, there is no propriety in remanding the matter. Thereafter the Appellate Court proceeded to observe thus:

> "So if at all the parties are interested, may get it declared by approaching proper forum."

4. Thus the learned Counsel for the 1st to 3rd Respondent is right when he submitted that the Appellate Court has not at all decided the issue of title. In fact the issue of title has been kept open and the remedy of the parties of filing a suit for declaration

of title is also expressly kept open. The decree of declaration is confirmed by the Appellate Court on the ground that the mandatory procedure was not followed by the Taluka Inspector of Land Records. The decree of declaration has been confirmed on the basis of proof of possession. The issue of title and the remedy of the parties to seek declaration have been expressly kept open.

5. In so far as the finding regarding declaration is concerned, it is very difficult to find fault with the said finding as what is held is that the order passed by the Taluka Inspector of Land Records is a nullity as the same is passed in violation of the provisions of law. In so far as the finding regarding possession is concerned, it is based on evidence in the form of city survey record and tax assessment. There is no reason to find fault with the said findings. There is no substantial question of law arise.

6. Subject to what is observed above, the Second Appeal is dismissed. No order as to costs.

Judge.